IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30550
Conference Calendar

JAMES GREEN,

Plaintiff-Appellant,

versus

CLERK OF COURT, PARISH OF ORLEANS,
CRIMINAL DISTRICT, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-94-1920-I

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(January 26, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS, Circuit Judges.

PER CURIAM:[*]

This Court must examine the basis of its jurisdiction on its own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). Any postjudgment motion that challenges the underlying judgment, requests relief other than correction of a purely clerical error, and is served more than ten days after judgment is entered, is treated as a motion under Fed. R. Civ. P. 60(b). Harcon Barge Co. v. D & G Boat Rentals, 784 F.2d 665, 667 (5th Cir.)(en banc), cert. denied, 479 U.S. 930 (1986). Any Rule

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[*] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

60(b) motion raising substantially similar grounds as urged, or could have been urged, in an earlier motion is deemed successive, and any appeal based on such a motion is not reviewable by this Court. Latham v. Wells Fargo Bank, N.A., 987 F.2d 1199, 1204 (5th Cir. 1993); Charles L.M. v. Northeast Indep. Sch. Dist., 884 F.2d 869, 870 (5th Cir. 1989); Burnside v. Eastern Airlines, 519 F.2d 1127, 1128 (5th Cir. 1975).

The August 30, 1994, motion for "re-hearing" sought relief from the court's August 4, 1994, denial of the motions for default judgment, indirectly challenging the correctness of the underlying judgment. The motion for rehearing was not served within 10 days of the challenged order. The argument in it is that the district court clerk had confused Green's suit with another suit and mistakenly assigned the same cause number to both actions. Thus, Green's motion for rehearing is a Rule 60(b) motion. His September 19, 1994, motion to show cause included substantially the same grounds as the motion for rehearing. Thus, the motion to show cause is a successive Rule 60(b) motion.

Green did not appeal the denial of his first Rule 60(b) motion;[**] instead, he has attempted to appeal the district court's September 27, 1994, minute entry denying his successive Rule 60(b) motion -- the September 19, 1994, motion to show cause. Because the filing of Green's successive Rule 60(b) motion did not toll the running of the thirty-day period for

[**] Although Green filed a timely notice from the district court's July 7, 1994, judgment, his appeal was dismissed by the Clerk of this Court for want of prosecution.

filing a notice of appeal from the district court's August 4 dismissal of Green's August 2 motions, his notice of appeal is not timely. See Latham, 987 F.2d at 1203-04; Charles L.M., 884 F.2d at 870; Burnside, 519 F.2d at 1128. Without a timely notice of appeal of a reviewable judgment, this Court does not have appellate jurisdiction. Fed. R. App. P. 3(a), 4(a). Accordingly, this Court does not have appellate jurisdiction over the order from which the appeal is taken.

DISMISSED.